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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,880	04/14/2004	Douglas P. Lynch	05-00634-02	5670
23845 7590 10/29/2008 ADVANCED BIONICS, LLC 25129 RYE CANYON LOOP VALENCIA, CA 91355				
EXAMINER LE, HUYEN D				
ART UNIT 2614		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/823,880

Applicant(s)

LYNCH ET AL.

Examiner

HUYEN D. LE

Art Unit

2614

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/23/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 10, 12-16 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 10, 12-16 and 21-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 9-10, 12-15, 21, 23 and 27-33 are rejected under 35 U.S.C. 102(a) as being anticipated by Money (U.S. patent 6,496,734).

Regarding claims 9 and 28, Money teaches a method and apparatus of a behind-the-ear unit (16), a headpiece (17), and an assistive listening device cap (15, 21) configured to attach to the headpiece (17) and to be worn external to a patient's body (figure 1).

The assistive listening cap (15, 21) includes data communication electronics and is configured to mechanically attach to the exterior surface of the headpiece (17, figure 1), and the data communication electronics are configured to communicate with corresponding communication electronics within the headpiece (17).

Regarding claim 10, Money teaches the behind-the-ear unit including a cochlear implant speech processor (15, figure 1, col. 5, lines 41-44).

Regarding claim 12, Money teaches the data communication electronics that are configured to communicate with corresponding communication electronics of the behind-the-ear unit (16) or the headpiece (17) as claimed.

Regarding claim 13, Money teaches the data communication electronics that are configured to communicate with corresponding communications electronics implanted within the head of a patient with impaired hearing as claimed (figure 1).

Regarding claims 14, 21 and 23, Money teaches the data communication electronics that are configured to communicate with the communication electronics of the headpiece (17) through wireless signals as claimed (col. 4, lines 59-61).

Regarding claims 15, 27 and 33, as broadly claimed, since RF coil (21) is connected to the speech processor (15, figure 1), the data communication electronics of the listening device cap (21) are powered by an external power source for transmitting energy to the electronics of the listening device cap when the device is in operation.

Regarding claims 29-31, Money teaches a system that comprises an implantable hearing device (18, 19, 20, figure 1), a behind-the-ear unit (16), a headpiece (17), and an assistive listening device cap (15, 21) to attach to the headpiece and to be worn external to a patient's body, wherein the assistive listening device cap (21) includes data communication electronics configured to communicate with corresponding communication electronics within the headpiece (17) as claimed.

Regarding claim 32, as shown in figure 1, the data communication electronics of the listening device cap (21) are configured to communicate with the communications of the headpiece (17) through the wireless signals as claimed (col. 4, lines 59-61).

3. Claims 9, 10, 12-15, 28 and 29-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Maltan et al. (U.S. patent 7,349,741).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 9, 10, 12-15, 28 and 29-33, as broadly claimed, Maltan et al. teaches a method and apparatus of a behind-the-ear unit (36, 36a, 36b, 36c, 36d), an implantable hearing device (12, 14), a headpiece (50, figures 3, 4), and an assistive listening device cap (20, figure 4) configured to attach to the headpiece (50) and to be worn external to a patient's body.

The assistive listening cap (20) includes data communication electronics and is configured to mechanically attach to the exterior surface of the headpiece (50), and the data communication electronics are configured to communicate with corresponding communication electronics within the headpiece (50).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 15, 22, 24-27 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Money (U.S. patent 6,496,734).

Regarding claims 15, 27 and 33, as interpreted in a different manner, Money does not specifically teach a power source as claimed in claims 15 and 33. However, providing a power source for an implanted hearing device is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide a power source in the speech processor (15) of the implanted hearing device of Money for better providing a power source to the data communication electronics.

Regarding claims 22 and 24, Money teaches the data communication electronics of the listening device cap (21) that are configured to communicate with the communication electronics of the headpiece (17) through wireless signals as claimed (col. 4, lines 59-61). Money does not specifically teach the direct electrical contacts or electrically conductive wire as claimed.

However, it would have been obvious to one skilled in the art to provide the wireless or wired signals such as the direct electrical contacts or electrically conductive wire for the desired purpose of better transmitting signals between the data communications electronics of the

listening device cap (21) and the communication electronics of the headpiece (17) depending on the applications.

Regarding claims 25-26, Money does not specifically teach a primary battery or a rechargeable battery within the listening device cap (15, 21). However, providing a power source for an implanted hearing device is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide any power source in the assistive listening device cap (15, 21) such as a primary battery or a rechargeable battery for better providing a power source to the data communication electronics.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Money (U.S. patent 6,496,734) in view of Miller (U.S. patent 6,726,618).

Money does not specifically teach the assistive listening device cap (21) that is configured to mechanically attach to the headpiece (17) by means of magnetic force. However, providing the magnets for positioning and attaching the coil or the RF signal transmitter to the implanted receiver is known in the art.

Miller teaches the external transmitter comprising a coil element (204) that is attached to the implanted receiver (118) by the magnets (102, 206).

Therefore, it would have been obvious to one skilled in the art to provide the magnets, as taught by Miller, to the assistive listening device cap (21) and the headpiece (17) of the Money device for better positioning the cap and the headpiece to the wearer.

Response to Arguments

7. Applicant's arguments with respect to claims 9, 10, 12-16 and 21-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/
Primary Examiner, Art Unit 2614

